



April 10, 2015

ENGROSSED SENATE BILL No. 463

DIGEST OF SB 463 (Updated April 9, 2015 11:22 am - DI 107)

Citations Affected: IC 7.1-3; IC 7.1-5; IC 24-3; noncode.

Synopsis: Cigarettes and tobacco sales. Prohibits the sale at retail of an electronic cigarette without a valid tobacco sales certificate issued by the alcohol and tobacco commission (commission). Provides that the alcohol and tobacco commission may not enforce an action regarding tobacco sales certificates and electronic cigarettes until after August 31, 2015. Amends the law on the qualified escrow fund for tobacco product manufacturers: (1) to exempt cigarettes sold on federal military installations and other state excise tax exempt cigarette sales from the definition of "units sold"; and (2) to require the department of state revenue (department) to adopt rules that are necessary to ascertain the number of units sold of a tobacco product manufacturer for each year regardless of whether the state excise tax was due or collected. Authorizes the department, the commission, and the attorney general to provide certain information to courts, arbitrators, and data
(Continued next page)

Effective: July 1, 2015.

Miller Patricia, Merritt, Randolph

(HOUSE SPONSORS — BROWN T, BROWN C, CLERE)

January 14, 2015, read first time and referred to Committee on Commerce & Technology.
February 16, 2015, amended, reported favorably — Do Pass; reassigned to Committee on Appropriations.
February 17, 2015, reassigned to Committee on Rules & Legislative Procedure pursuant to Rule 68(b).
February 17, 2015, reported favorably — Do Pass.
February 19, 2015, read second time, ordered engrossed. Engrossed.
February 23, 2015, read third time, passed. Yeas 42, nays 7.
HOUSE ACTION
March 3, 2015, read first time and referred to Committee on Public Policy.
April 9, 2015, amended, reported — Do Pass.

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Digest Continued

clearinghouses for the purpose of making calculations under the tobacco master settlement agreement if a protective order is executed. Makes specified tobacco sales data that is provided by an outside party confidential. Prohibits the manufacture, sale, or distribution of: (1) a liquid or gel substance containing nicotine; or (2) a nicotine liquid container; unless the product is contained in child resistant packaging. Authorizes the commission to seize and destroy products sold or distributed in violation of this prohibition and to impose a civil penalty on a person who sells or distributes a product in violation of the prohibition. Limits the civil penalty to the greater of: (1) 500% of the retail value of the product sold or distributed; or (2) \$5,000. Removes the requirement that members of a club or fraternal club must vote to allow smoking on the premises. Provides that the club or fraternal club may only allow guests in the designated smoking room or area when accompanied by a bona fide member. Permits smoking in certain cigar stores and bars. Urges the legislative council to assign certain tobacco related issues to the public policy interim study committee during the 2015 interim.



April 10, 2015

First Regular Session 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

ENGROSSED SENATE BILL No. 463

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 7.1-3-18.5-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. (a) A person may not
3 sell or otherwise distribute in exchange for consideration a tobacco
4 product **or electronic cigarette** at retail without a valid tobacco sales
5 certificate issued by the commission.

6 (b) A certificate may be issued only to a person who owns or
7 operates at least one (1) of the following:

8 (1) A premises consisting of a permanent building or structure
9 where the tobacco product **or electronic cigarette** is sold or
10 distributed.

11 (2) A premises upon which a cigarette vending machine (as
12 defined by IC 35-43-4-7) is located.

13 (c) **The commission may not enforce an action under this section**
14 **regarding electronic cigarettes until after August 31, 2015. This**
15 **subsection expires December 31, 2016.**

16 SECTION 2. IC 7.1-5-12-5, AS AMENDED BY P.L.70-2014,

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SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) Except as provided in subsection (c) and subject to section 13 of this chapter, smoking may be allowed in the following:

(1) A horse racing facility operated under a permit under IC 4-31-5 and any other permanent structure on land owned or leased by the owner of the facility that is adjacent to the facility.

(2) A riverboat (as defined in IC 4-33-2-17) and any other permanent structure that is:

(A) owned or leased by the owner of the riverboat; and

(B) located on land that is adjacent to:

(i) the dock to which the riverboat is moored; or

(ii) the land on which the riverboat is situated in the case of a riverboat described in IC 4-33-2-17(2).

(3) A facility that operates under a gambling game license under IC 4-35-5 and any other permanent structure on land owned or leased by the owner of the facility that is adjacent to the facility.

(4) A satellite facility licensed under IC 4-31-5.5.

(5) An establishment owned or leased by a business that meets the following requirements:

(A) The business was in business and permitted smoking on December 31, 2012.

(B) The business prohibits entry by an individual who is less than twenty-one (21) years of age.

(C) The owner or operator of the business holds a beer, liquor, or wine retailer's permit.

(D) The business limits smoking in the establishment to ~~either:~~

~~(i) cigar smoking; or~~

~~(ii) smoking with a waterpipe or hookah device.~~

(E) During the preceding calendar year, at least ten percent (10%) of the business's annual gross income was from

~~(i) the sale of cigars and the rental of onsite humidors; or~~

~~(ii) the sale of loose tobacco for use in a waterpipe or hookah device.~~

(F) The person in charge of the business posts in the establishment conspicuous signs that display the message that cigarette smoking is prohibited.

(6) An establishment owned or leased by a business that meets the following requirements:

(A) The business prohibits entry by an individual who is less than twenty-one (21) years of age.

(B) The owner or operator of the business holds a beer,



liquor, or wine retailer's permit.

(C) The business limits smoking in the establishment to cigar smoking.

(D) During the preceding calendar year, at least ten percent (10%) of the business's annual gross income was from the sale of cigars and the rental of onsite humidors.

(E) The person in charge of the business posts in the establishment conspicuous signs that display the message that cigarette smoking and electronic cigarette smoking are prohibited.

~~(6)~~ (7) A premises owned or leased by and regularly used for the activities of a business that meets all of the following:

(A) The business is exempt from federal income taxation under 26 U.S.C. 501(c).

(B) The business:

(i) meets the requirements to be considered a club under IC 7.1-3-20-1; or

(ii) is a fraternal club (as defined in IC 7.1-3-20-7).

(C) The business provides food or alcoholic beverages only to its bona fide members and their guests.

~~(D) The business, during a meeting of the business's members, voted within the previous two (2) years to allow smoking on the premises.~~

(D) The business:

(i) provides a separate, enclosed, designated smoking room or area that is adequately ventilated to prevent migration of smoke to nonsmoking areas of the premises;

(ii) allows smoking only in the room or area described in item (i);

(iii) does not allow an individual who is less than eighteen (18) years of age to enter into the room or area described in item (i); and

(iv) allows a guest in the smoking room or area described in item (i) only when accompanied by a bona fide member of the business.

(E) The business:

(i) provides a separate, enclosed, designated smoking room or area that is adequately ventilated to prevent migration of smoke to nonsmoking areas of the premises;

(ii) allows smoking only in the room or area described in item (i); and

(iii) does not allow an individual who is less than eighteen



- 1 (18) years of age to enter into the room or area described in
 2 item (i).
- 3 ~~(7)~~ **(8)** A retail tobacco store used primarily for the sale of tobacco
 4 products and tobacco accessories that meets the following
 5 requirements:
- 6 (A) The owner or operator of the store ~~held~~ **holds** a valid
 7 tobacco sales certificate issued under IC 7.1-3-18.5. ~~on June~~
 8 ~~30, 2012.~~
- 9 (B) The store prohibits entry by an individual who is less than
 10 eighteen (18) years of age.
- 11 (C) The sale of products other than tobacco products and
 12 tobacco accessories is merely incidental.
- 13 (D) The sale of tobacco products accounts for at least
 14 eighty-five percent (85%) of the store's annual gross sales.
- 15 (E) Food or beverages are not sold in a manner that requires
 16 consumption on the premises, and there is not an area set aside
 17 for customers to consume food or beverages on the premises.
- 18 ~~(8)~~ **(9)** A bar or tavern:
- 19 (A) for which a permittee holds:
- 20 (i) a beer retailer's permit under IC 7.1-3-4;
 21 (ii) a liquor retailer's permit under IC 7.1-3-9; or
 22 (iii) a wine retailer's permit under IC 7.1-3-14;
- 23 (B) that does not employ an individual who is less than
 24 eighteen (18) years of age;
- 25 (C) that:
- 26 (i) does not allow an individual who
 27 ~~(i)~~ is less than twenty-one (21) years of age; and
 28 (ii) is not an employee of the bar or tavern;
 29 to enter any area of the bar or tavern; and
- 30 (D) that is not located in a business that would otherwise be
 31 subject to this chapter.
- 32 ~~(9)~~ **(10)** A cigar manufacturing facility that does not offer retail
 33 sales.
- 34 ~~(10)~~ **(11)** A premises of a cigar specialty store to which all of the
 35 following apply:
- 36 (A) The owner or operator of the store ~~held~~ **holds** a valid
 37 tobacco sales certificate issued under IC 7.1-3-18.5. ~~on June~~
 38 ~~30, 2012.~~
- 39 (B) The sale of tobacco products and tobacco accessories
 40 account for at least fifty percent (50%) of the store's annual
 41 gross sales.
- 42 (C) The store has a separate, enclosed, designated smoking



1 room that is adequately ventilated to prevent migration of
 2 smoke to nonsmoking areas.
 3 (D) Smoking is allowed only in the room described in clause
 4 (C).
 5 (E) Individuals who are less than eighteen (18) years of age are
 6 prohibited from entering into the room described in clause (C).
 7 (F) Cigarette smoking is not allowed on the premises of the
 8 store.
 9 (G) The owner or operator of the store posts a conspicuous
 10 sign on the premises of the store that displays the message that
 11 cigarette smoking is prohibited.
 12 (H) Food or beverages are not sold in a manner that requires
 13 consumption on the premises, and there is not an area set aside
 14 for customers to consume food or beverages on the premises.
 15 ~~(H)~~ (12) The premises of a business that is located in the
 16 business owner's private residence (as defined in IC 3-5-2-42.5)
 17 if the only employees of the business who work in the residence
 18 are the owner and other individuals who reside in the residence.
 19 (b) The owner, operator, manager, or official in charge of an
 20 establishment or premises in which smoking is allowed under this
 21 section shall post conspicuous signs in the establishment that read
 22 "WARNING: Smoking Is Allowed In This Establishment" or other
 23 similar language.
 24 (c) This section does not allow smoking in the following enclosed
 25 areas of an establishment or premises described in subsection (a)(1)
 26 through ~~(a)(10)~~: **(a)(9)**:
 27 (1) Any hallway, elevator, or other common area where an
 28 individual who is less than eighteen (18) years of age is permitted.
 29 (2) Any room that is intended for use by an individual who is less
 30 than eighteen (18) years of age.
 31 (d) The owner, operator, or manager of an establishment or premises
 32 that is listed under subsection (a) and that allows smoking shall provide
 33 a verified statement to the commission that states that the establishment
 34 or premises qualifies for the exemption. The commission may require
 35 the owner, operator, or manager of an establishment or premises to
 36 provide documentation or additional information concerning the
 37 exemption of the establishment or premises.
 38 SECTION 3. IC 24-3-3-11 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 11. **(a)** As used in this
 40 chapter, "units sold" means the number of individual cigarettes sold in
 41 Indiana by the applicable tobacco product manufacturer (whether
 42 directly or through a distributor, retailer, or similar intermediary or



intermediaries) during the year in question. ~~as measured by excise taxes collected by the state on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the state.~~ The department of state revenue shall, in the manner provided by IC 4-22-2, adopt rules that are necessary to ascertain the ~~amount of state excise tax paid on the cigarettes~~ **number of units sold** of such tobacco product manufacturer for each year **regardless of whether the state excise tax was due or collected.**

(b) The term does not include cigarettes sold on federal military installations or that are otherwise exempt from state excise tax under federal law.

(c) For purposes of this section, concerning cigarettes for which the state cigarette or other tobacco product tax is paid, the cigarettes shall be deemed as being sold in Indiana:

(1) upon the affixing of the state cigarette tax stamp; or

(2) for "roll your own" tobacco, when the state tax on other tobacco products is paid.

SECTION 4. IC 24-3-5.4-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 18. **(a)** The department and the commission shall disclose to the attorney general any information received under this chapter and requested by the attorney general for purposes of determining compliance with and enforcing this chapter. The department, the commission, and the attorney general:

(1) shall share with each other the information received under this chapter; and

(2) may share the information received under this chapter with other federal, state, or local agencies only for purposes of enforcing this chapter or a corresponding law in another state.

(b) Notwithstanding any other law:

(1) the department, the commission, or the attorney general may provide information received under section 17 of this chapter to a court, an arbitrator, or a data clearinghouse or similar entity:

(A) for the purposes of making calculations required by the master settlement agreement and related settlement agreements; and

(B) with counsel for the parties;

upon the execution of a protective order approved by the attorney general; and

(2) any tobacco sales data provided from an outside party and received under the master settlement agreement must be treated as confidential under IC 5-14-3-4(a)(4) and



IC 5-14-3-4(a)(5).

SECTION 5. IC 24-3-7 IS ADDED TO THE INDIANA CODE AS
A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
1, 2015]:

Chapter 7. Nicotine Liquid Container Packaging

Sec. 1. This chapter does not apply to any product that:

(1) has been approved or certified by the United States Food
and Drug Administration for sale:

(A) as a tobacco cessation product;

(B) as a tobacco dependence product; or

(C) for another medical purpose; and

(2) is marketed and sold for an approved purpose referred to
in subdivision (1)(A) through (1)(C).

Sec. 2. As used in this chapter, "child resistant packaging"
means packaging that:

(1) is designed or constructed so that it is significantly difficult
for children less than five (5) years of age to:

(A) open the package; or

(B) obtain a toxic or harmful amount of substance from
within the package;

within a reasonable time; but

(2) is not difficult for adults to use properly.

Sec. 3. As used in this chapter, "commission" refers to the
alcohol and tobacco commission created by IC 7.1-2-1-1.

Sec. 4. As used in this chapter, "electronic cigarette" means a
device that is capable of providing an inhalable dose of nicotine by
delivering a vaporized solution. The term includes the components
and cartridges of an electronic cigarette.

Sec. 5. (a) As used in this chapter, "electronic delivery device"
means any product that:

(1) contains or delivers nicotine, lobelia, or any other
substance intended for human consumption; and

(2) can be used by a person to simulate smoking in the
delivery of nicotine, lobelia, or any other substance through
inhalation of vapor from the product.

(b) The term includes any component part of a product
described in subsection (a), whether or not the component part is
marketed or sold separately.

Sec. 6. (a) As used in this chapter, "nicotine liquid container"
means a bottle or other container that:

(1) contains a nicotine liquid or another substance containing
nicotine; and



(2) is sold, marketed, or intended for use with an electronic cigarette or other electronic delivery device.

(b) The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use with an electronic cigarette if the cartridge:

- (1) is prefilled and sealed by the manufacturer; and
- (2) is not intended to be opened by the consumer.

Sec. 7. A person may not manufacture, sell, or distribute:

- (1) a liquid or gel substance containing nicotine; or
- (2) a nicotine liquid container;

unless the product is contained in child resistant packaging.

Sec. 8. (a) If the commission discovers any product sold or distributed in violation of this chapter, the commission may seize and take possession of the product. The commission shall destroy products seized under this subsection.

(b) The commission may impose a civil penalty on any person who sells or distributes a product in violation of this chapter. However, the civil penalty may not exceed the greater of:

- (1) five hundred percent (500%) of the retail value of the product sold or distributed in violation of this chapter; or
- (2) five thousand dollars (\$5,000).

SECTION 6. [EFFECTIVE JULY 1, 2015] (a) The general assembly urges the legislative council to assign the following topics to the public policy interim study committee during the 2015 interim:

- (1) whether smoking should be prohibited in bars, casinos, and private clubs;
- (2) the fiscal impact of prohibiting smoking in bars, casinos, and private clubs;
- (3) whether e-cigarettes should be:
 - (A) defined as tobacco products; and
 - (B) subject to smoking bans;
- (4) e-cigarette taxation;
- (5) the fiscal impact of an increase in the cigarette tax;
- (6) possible funding sources for tobacco use prevention and cessation programs;
- (7) the impact of the tobacco tax on smoking rates and healthy living ratings relative to other states;
- (8) the impact of smoking upon families and pregnancy;
- (9) the costs incurred by the state as a result of:
 - (A) smoking during pregnancy; and
 - (B) smoking within families; and



1 (10) the fiscal impact of changing existing laws regarding
2 cigarette tax distribution.

3 (b) If the topics described in subsection (a) are assigned to a
4 study committee, the study committee shall issue a final report to
5 the legislative council containing the study committee's findings
6 and recommendations, including any recommended legislation
7 concerning the topics, in an electronic format under IC 5-14-6 not
8 later than November 1, 2015.

9 (c) This SECTION expires December 31, 2015.



COMMITTEE REPORT

Madam President: The Senate Committee on Commerce and Technology, to which was referred Senate Bill No. 463, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 7.1-3-18.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 1. (a) A person may not sell or otherwise distribute in exchange for consideration a tobacco product **or electronic cigarette** at retail without a valid tobacco sales certificate issued by the commission.

(b) A certificate may be issued only to a person who owns or operates at least one (1) of the following:

(1) A premises consisting of a permanent building or structure where the tobacco product **or electronic cigarette** is sold or distributed.

(2) A premises upon which a cigarette vending machine (as defined by IC 35-43-4-7) is located."

Page 1, line 6, delete "question," and insert "question."

Page 1, line 8, reset in roman "The department".

Page 1, reset in roman line 9.

Page 1, line 10, reset in roman "that are necessary to ascertain the".

Page 1, line 11, after "cigarettes" insert "**number of units sold**".

Page 1, line 11, reset in roman "of such tobacco product manufacturer for each year."

Page 1, line 11, delete "year." and insert "year".

Page 2, line 19, delete "IC 24-3-5.4-17" and insert "**section 17 of this chapter**".

Page 2, line 22, delete "agreement;" and insert "**agreement and related settlement agreements;**".

Page 2, after line 29, begin a new paragraph and insert:

"SECTION 4. IC 24-3-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]:

Chapter 7. Nicotine Liquid Container Packaging

Sec. 1. This chapter does not apply to any product that:

(1) **has been approved or certified by the United States Food and Drug Administration for sale:**

(A) **as a tobacco cessation product;**



- (B) as a tobacco dependence product; or
- (C) for another medical purpose; and
- (2) is marketed and sold for an approved purpose referred to in subdivision (1)(A) through (1)(C).

Sec. 2. As used in this chapter, "child resistant packaging" means packaging that:

- (1) is designed or constructed so that it is significantly difficult for children less than five (5) years of age to:
 - (A) open the package; or
 - (B) obtain a toxic or harmful amount of substance from within the package;
 within a reasonable time; but
- (2) is not difficult for adults to use properly.

Sec. 3. As used in this chapter, "commission" refers to the alcohol and tobacco commission created by IC 7.1-2-1-1.

Sec. 4. As used in this chapter, "electronic cigarette" means a device that is capable of providing an inhalable dose of nicotine by delivering a vaporized solution. The term includes the components and cartridges of an electronic cigarette.

Sec. 5. (a) As used in this chapter, "electronic delivery device" means any product that:

- (1) contains or delivers nicotine, lobelia, or any other substance intended for human consumption; and
- (2) can be used by a person to simulate smoking in the delivery of nicotine, lobelia, or any other substance through inhalation of vapor from the product.

(b) The term includes any component part of a product described in subsection (a), whether or not the component part is marketed or sold separately.

Sec. 6. (a) As used in this chapter, "nicotine liquid container" means a bottle or other container that:

- (1) contains a nicotine liquid or another substance containing nicotine; and
- (2) is sold, marketed, or intended for use with an electronic cigarette or other electronic delivery device.

(b) The term does not include a container containing nicotine in a cartridge that is sold, marketed, or intended for use with an electronic cigarette if the cartridge:

- (1) is prefilled and sealed by the manufacturer; and
- (2) is not intended to be opened by the consumer.

Sec. 7. A person may not manufacture, sell, or distribute:

- (1) a liquid or gel substance containing nicotine; or



**(2) a nicotine liquid container;
unless the product is contained in child resistant packaging.**

Sec. 8. (a) If the commission discovers any product sold or distributed in violation of this chapter, the commission may seize and take possession of the product. The commission shall destroy products seized under this subsection.

(b) The commission may impose a civil penalty on any person who sells or distributes a product in violation of this chapter. However, the civil penalty may not exceed the greater of:

- (1) five hundred percent (500%) of the retail value of the product sold or distributed in violation of this chapter; or**
- (2) five thousand dollars (\$5,000)."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass and be reassigned to the Senate Committee on Appropriations.

(Reference is to SB 463 as introduced.)

BUCK, Chairperson

Committee Vote: Yeas 8, Nays 2.

Report of the President
Pro Tempore

Madam President: Pursuant to Senate Rule 68(b), I hereby report that SB 463, currently assigned to the Committee on Appropriations, be reassigned to the Committee on Rules & Legislative Procedure.

LONG



COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure has reconsidered the reassignment of SB 463 to the Senate Committee on Appropriations by the Senate Committee on Commerce and Technology and has determined that SB 463 no longer requires reassignment and recommends SB 463 DO PASS out of the Senate Committee on Rules and Legislative Procedure in the form recommended by the Senate Committee on Commerce and Technology.

LONG, Chairperson

(Reference is to SB 463 as printed February 17, 2015.)

COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Policy, to which was referred Senate Bill 463, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between lines 12 and 13, begin a new paragraph and insert:

"(c) The commission may not enforce an action under this section regarding electronic cigarettes until after August 31, 2015. This subsection expires December 31, 2016.

SECTION 2. IC 7.1-5-12-5, AS AMENDED BY P.L.70-2014, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5. (a) Except as provided in subsection (c) and subject to section 13 of this chapter, smoking may be allowed in the following:

- (1) A horse racing facility operated under a permit under IC 4-31-5 and any other permanent structure on land owned or leased by the owner of the facility that is adjacent to the facility.
- (2) A riverboat (as defined in IC 4-33-2-17) and any other permanent structure that is:
 - (A) owned or leased by the owner of the riverboat; and
 - (B) located on land that is adjacent to:
 - (i) the dock to which the riverboat is moored; or
 - (ii) the land on which the riverboat is situated in the case of a riverboat described in IC 4-33-2-17(2).
- (3) A facility that operates under a gambling game license under

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IC 4-35-5 and any other permanent structure on land owned or leased by the owner of the facility that is adjacent to the facility.

(4) A satellite facility licensed under IC 4-31-5.5.

(5) An establishment owned or leased by a business that meets the following requirements:

(A) The business was in business and permitted smoking on December 31, 2012.

(B) The business prohibits entry by an individual who is less than twenty-one (21) years of age.

(C) The owner or operator of the business holds a beer, liquor, or wine retailer's permit.

(D) The business limits smoking in the establishment to ~~either:~~

~~(i) cigar smoking; or~~

~~(ii) smoking with a waterpipe or hookah device.~~

(E) During the preceding calendar year, at least ten percent (10%) of the business's annual gross income was from

~~(i) the sale of cigars and the rental of onsite humidors; or~~

~~(ii) the sale of loose tobacco for use in a waterpipe or hookah device.~~

(F) The person in charge of the business posts in the establishment conspicuous signs that display the message that cigarette smoking is prohibited.

(6) An establishment owned or leased by a business that meets the following requirements:

(A) The business prohibits entry by an individual who is less than twenty-one (21) years of age.

(B) The owner or operator of the business holds a beer, liquor, or wine retailer's permit.

(C) The business limits smoking in the establishment to cigar smoking.

(D) During the preceding calendar year, at least ten percent (10%) of the business's annual gross income was from the sale of cigars and the rental of onsite humidors.

(E) The person in charge of the business posts in the establishment conspicuous signs that display the message that cigarette smoking and electronic cigarette smoking are prohibited.

~~(6)~~ **(7) A premises owned or leased by and regularly used for the activities of a business that meets all of the following:**

(A) The business is exempt from federal income taxation under 26 U.S.C. 501(c).

(B) The business:



(i) meets the requirements to be considered a club under IC 7.1-3-20-1; or

(ii) is a fraternal club (as defined in IC 7.1-3-20-7).

(C) The business provides food or alcoholic beverages only to its bona fide members and their guests.

~~(D) The business, during a meeting of the business's members, voted within the previous two (2) years to allow smoking on the premises.~~

(D) The business:

(i) provides a separate, enclosed, designated smoking room or area that is adequately ventilated to prevent migration of smoke to nonsmoking areas of the premises;

(ii) allows smoking only in the room or area described in item (i);

(iii) does not allow an individual who is less than eighteen (18) years of age to enter into the room or area described in item (i); and

(iv) allows a guest in the smoking room or area described in item (i) only when accompanied by a bona fide member of the business.

(E) The business:

(i) provides a separate, enclosed, designated smoking room or area that is adequately ventilated to prevent migration of smoke to nonsmoking areas of the premises;

(ii) allows smoking only in the room or area described in item (i); and

(iii) does not allow an individual who is less than eighteen (18) years of age to enter into the room or area described in item (i).

~~(7)~~ **(8)** A retail tobacco store used primarily for the sale of tobacco products and tobacco accessories that meets the following requirements:

(A) The owner or operator of the store ~~held~~ **holds** a valid tobacco sales certificate issued under IC 7.1-3-18.5. ~~on June 30, 2012.~~

(B) The store prohibits entry by an individual who is less than eighteen (18) years of age.

(C) The sale of products other than tobacco products and tobacco accessories is merely incidental.

(D) The sale of tobacco products accounts for at least eighty-five percent (85%) of the store's annual gross sales.

(E) Food or beverages are not sold in a manner that requires



consumption on the premises, and there is not an area set aside for customers to consume food or beverages on the premises.

~~(8)~~ **(9)** A bar or tavern:

(A) for which a permittee holds:

- (i) a beer retailer's permit under IC 7.1-3-4;
- (ii) a liquor retailer's permit under IC 7.1-3-9; or
- (iii) a wine retailer's permit under IC 7.1-3-14;

(B) that does not employ an individual who is less than eighteen (18) years of age;

(C) that:

- (i) does not allow an individual who
- ~~(i)~~ is less than twenty-one (21) years of age; and
- (ii) is not an employee of the bar or tavern;

to enter any area of the bar or tavern; and

(D) that is not located in a business that would otherwise be subject to this chapter.

~~(9)~~ **(10)** A cigar manufacturing facility that does not offer retail sales.

~~(10)~~ **(11)** A premises of a cigar specialty store to which all of the following apply:

(A) The owner or operator of the store ~~held~~ **holds** a valid tobacco sales certificate issued under IC 7.1-3-18.5. ~~on June 30, 2012.~~

(B) The sale of tobacco products and tobacco accessories account for at least fifty percent (50%) of the store's annual gross sales.

(C) The store has a separate, enclosed, designated smoking room that is adequately ventilated to prevent migration of smoke to nonsmoking areas.

(D) Smoking is allowed only in the room described in clause (C).

(E) Individuals who are less than eighteen (18) years of age are prohibited from entering into the room described in clause (C).

(F) Cigarette smoking is not allowed on the premises of the store.

(G) The owner or operator of the store posts a conspicuous sign on the premises of the store that displays the message that cigarette smoking is prohibited.

(H) Food or beverages are not sold in a manner that requires consumption on the premises, and there is not an area set aside for customers to consume food or beverages on the premises.

~~(11)~~ **(12)** The premises of a business that is located in the



business owner's private residence (as defined in IC 3-5-2-42.5) if the only employees of the business who work in the residence are the owner and other individuals who reside in the residence.

(b) The owner, operator, manager, or official in charge of an establishment or premises in which smoking is allowed under this section shall post conspicuous signs in the establishment that read "WARNING: Smoking Is Allowed In This Establishment" or other similar language.

(c) This section does not allow smoking in the following enclosed areas of an establishment or premises described in subsection (a)(1) through ~~(a)(10)~~: **(a)(9)**:

(1) Any hallway, elevator, or other common area where an individual who is less than eighteen (18) years of age is permitted.

(2) Any room that is intended for use by an individual who is less than eighteen (18) years of age.

(d) The owner, operator, or manager of an establishment or premises that is listed under subsection (a) and that allows smoking shall provide a verified statement to the commission that states that the establishment or premises qualifies for the exemption. The commission may require the owner, operator, or manager of an establishment or premises to provide documentation or additional information concerning the exemption of the establishment or premises."

Page 4, after line 22, begin a new paragraph and insert:

"SECTION 6. [EFFECTIVE JULY 1, 2015] (a) The general assembly urges the legislative council to assign the following topics to the public policy interim study committee during the 2015 interim:

(1) whether smoking should be prohibited in bars, casinos, and private clubs;

(2) the fiscal impact of prohibiting smoking in bars, casinos, and private clubs;

(3) whether e-cigarettes should be:

(A) defined as tobacco products; and

(B) subject to smoking bans;

(4) e-cigarette taxation;

(5) the fiscal impact of an increase in the cigarette tax;

(6) possible funding sources for tobacco use prevention and cessation programs;

(7) the impact of the tobacco tax on smoking rates and healthy living ratings relative to other states;

(8) the impact of smoking upon families and pregnancy;

(9) the costs incurred by the state as a result of:



- (A) smoking during pregnancy; and**
- (B) smoking within families; and**
- (10) the fiscal impact of changing existing laws regarding cigarette tax distribution.**

(b) If the topics described in subsection (a) are assigned to a study committee, the study committee shall issue a final report to the legislative council containing the study committee's findings and recommendations, including any recommended legislation concerning the topics, in an electronic format under IC 5-14-6 not later than November 1, 2015.

(c) This SECTION expires December 31, 2015."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 463 as printed February 18, 2015.)

DERMODY

Committee Vote: yeas 13, nays 0.

